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OFFICE OF PETITIONS

In re Patent No. 7,563,760
Issued: July 21, 2009
Application No. 09/935,144
Filed: August 21, 2001
Dkt. No.: GFN-5213CP6CN

: DECISION ON APPLICATION FOR
: PATENT TERM ADJUSTMENT and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the petition filed on September 3, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by 1,160 days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

The correct period of adjustment under 37 CFR 1.702(a) is 620 days, not 600 days as set forth by patentees (330 days pursuant to 37 CFR 1.702(a)(1) + 290 days pursuant to 37 CFR 1.702(a)(4)).

The correction period of adjustment under 37 CFR 1.702(b) is 1,223 days, not 1,224 days as set forth by patentees. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on August 22, 2001 and ends on December 27, 2007, the day before the RCE was filed, and not December 28, 2007, the day of filing of the RCE, as calculated by patentees. See, 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 1,223 days, not 1,224 days.

The overall adjustment under 37 CFR 1.703 is properly reduced 446 days for applicant delays under 37 CFR 1.704, as acknowledged by patentees.

However, the "B" delay under 37 CFR 1.702(b) may not include the number of days in the period beginning on the date on which a Notice of Appeal was filed and ending on the date of mailing of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151,

whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences. See, 37 CFR 1.703(b)(4).

Accordingly, as a Notice of Appeal was filed February 28, 2006 and a non-final Office action was mailed in response thereto on October 4, 2006, the adjustment is properly reduced an additional 219 days. The period commenced February 28, 2006, the date that the Notice of Appeal was filed, and ended October 4, 2006, the date that the non-final Office action was mailed.

In view thereof, the patent is entitled to an overall adjustment of 1,178 days (620 days under 37 CFR 1.702(a) + 1,223 days under 37 CFR 1.702(b) – zero overlapping days – 219 days pursuant to 37 CFR 1.703(b)(4) – 446 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 1,178 days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,563,760

DATED : July 21, 2009

DRAFT

INVENTOR(S) : Larsen, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 991 days

Delete the phrase "by 991 days" and insert – by 1,178 days--